

DRAFT
8/15/13
BILL 49 (2013)
PROPOSED U/A

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL (X) PICKUP () TO:

Philip Kai Binney
Kealia Farms, LLC
1338 Mokulua Drive
Kailua, Hawaii 96734

Page 1 of

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTY TO DOCUMENT: Kealia Farms, LLC
1338 Mokulua Drive
Kailua, Hawaii 96734

TAX MAP KEY NO. (1) 6-8-002: 010 and 014

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this _____ day of _____, 2013, by Kealia Farms, a Hawaii Limited Liability

Company, whose address is 1338 Mokulua Drive, Kailua, Hawaii 96734 (hereinafter referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of those certain parcels of land situated in Mokuleia, consisting of approximately 13.089 acres, described as Tax Map Keys No. 6-8-002: 010 and 014, and more particularly described in Exhibit A & B attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant plans to use the Land for Agricultural purposes, including farm dwellings. (the "Project"); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from the P-2 General Preservation District to the AG-2 General Agricultural District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 49 (2013), was held by the Council on * ; and

WHEREAS, the Council recommended by its Zoning and Planning Committee Report No. _____ that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. **Archeological Inventory Survey.** Prior to issuance of a grading, grubbing, or building permit, whichever is first, the Declarant shall consult with the Department of Land and Natural Resources, State of Hawaii Preservation Division (SHPD), regarding the need for an Archeological Inventory Survey and/or mitigation plan. In the event the SHPD determines that a mitigation plan is required, the

Declarant shall comply with the SHPD recommendations and requirements.

2. **Required 60 foot Shoreline Setback.** The Declarant shall abide by a shoreline setback of 60 feet from the certified shoreline established by a certified shoreline survey prior to the issuance of building permits.
3. **Flora and Fauna.** Prior to issuance of a grading, grubbing, or building permit, whichever is first, the Declarant shall have a flora and fauna survey prepared for the site, in its entirety, by a qualified professional. In the event a mitigation plan is required, the Declarant shall comply with its recommendation and requirements.
4. **Limitation on Farm Dwelling.** No more than four farm dwellings shall be developed on the Land.
5. **Compliance with other Government Requirements.** The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.
6. **Annual reports.** On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction and/or describing its progress toward complying with each condition of approval for this zone change. This status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied. Failure to do so may result in delays in processing of further permits.
7. **Noncompliance with Conditions.** In the event of noncompliance with any of the conditions set forth herein, the Director of Planning and Permitting shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop the Project until applicable conditions are met, including but not limited to revoking any permits issued under this zoning and withholding issuance of other permits related to the Project. Noncompliance also may be grounds for the enactment of

ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANT:

KEALIA FARMS, LLC
a Hawaii Limited Liability Company

By _____
Philip Kai Binney, Member

KEALIA FARMS, LLC
a Hawaii Limited Liability Company

By _____

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

On this _____ day of _____, 2013, before me personally appeared _____ in his capacity as an _____ for Kealia Farms, LLC., a Hawaii Limited Liability Company, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

Print Name:

EXHIBIT "A"

All of that certain parcel of land situate at Mokuleia, District of Waialua, City and County of Honolulu, State of Hawaii, described as follows:

LOT 39, area 7.498 acres, more or less, as shown on Map 2, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1810 of Mokuleia Ranch and Land Company, Limited.

Being the land(s) described in Transfer Certificate of Title No. 859,139 issued to the Grantor herein.

Being the premises acquired by the Grantor herein by Warranty Deed of Safe Investment Properties, LLC, a Washington limited liability company, dated May 11, 2007, filed in the said Land Court as Land Court Document No. 3603953.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance.
3. Triangulation Survey Station "KEALIA" located within the land described herein, as shown on the Tax Map. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes, relative to destruction, defacing or removal of survey monuments.
4. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.
5. The land has no recorded access to a public roadway.
6. Any other liens or encumbrances of record.

7. Any unrecorded agreements or rights affecting the property described herein.

END OF EXHIBIT "A"

Tax Key: (1) 6-8-002-014

EXHIBIT "B"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant Number 338 to Hikiau and Kua) situate, lying and being at Kealia, District of Waialua, City and County of Honolulu, State of Hawaii, being LOT "B", also a portion of Former Oahu Railway and Land Company's Railroad Right-of-Way and Lot 1 of Land Court Application No. 665 (cancelled), and thus bounded and described:

Beginning at an iron pin, found, at the Southeast corner of this parcel of land, being also the Southwest corner of Lot 39 (Map 2) of Land Court Application 1810, and on the North side of Kaena Point road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "DILLINGHAM" being 71.05 feet North and 9,707.15 feet West, and running by azimuths measured clockwise from true South:

1. 90° 33' 45" 681.26 feet along the North side of Kaena Point Road to a 1/2" pipe (found);
2. 195° 00' 45" 160.00 feet along Lot 1-B (Map 4) of Land Court Application 588 to highwater mark (vegetation line) at seashore, and passing over an "L" cut in concrete (found) at 41.31 feet, and over a 1/2" pipe at 139.60 feet;
3. Thence along highwater mark (vegetation line) at seashore, the direct azimuth and distance between points being:
244° 16' 865.45 feet;
4. 14° 35' 45" 554.90 feet along Lot 39 (Map 2) of Land Court Application 1810 to an iron pin (found), passing over 1/2" pipe at 48.90 feet and a 1/2" pipe (found) at 513.60 feet, to the point of beginning and containing an area of 5.591 acres, more or less.

Being one of the premises acquired by the Grantor herein by Warranty Deed of Ocean Shores Properties, LLC, a Hawaii limited liability company, dated August 24, 2005, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2005-172207.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Location of the seaward boundary in accordance with the laws of the State of Hawaii and shoreline setback line in accordance with County regulation and/or ordinance and the effect, if any, upon the area of the land described herein.
3. Any other liens or encumbrances of record.
4. Any unrecorded agreements or rights affecting the property described herein.

END OF EXHIBIT "B"

Tax Key: (1) 6-8-002-010